

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2021-259-C - ORDER NO. 2021-738
NOVEMBER 9, 2021

IN RE: Petition of the Office of Regulatory Staff for)	ORDER GRANTING ORS
Commission to Order a Rule to Show Cause)	MOTION FOR DEFAULT
as to Why the Certificates of Public)	JUDGMENT AND
Convenience and Necessity for Certain)	REVOKING
Providers of Telecommunications Services)	CERTIFICATES
Should Not Be Revoked)	

I. INTRODUCTION

The Office of Regulatory Staff (ORS) petitioned the Public Service Commission of South Carolina (Commission) to Order a Rule to Show Cause as to Why the Certificates of Public Convenience and Necessity for Certain Providers of Telecommunications Services Should Not Be Revoked (Petition) for their failure to comply with orders, decisions, directions, rules, and regulations made or prescribed by the Commission. Exhibit A to the Petition listed twelve telecommunications companies out of compliance. Thereafter, ORS moved for a default judgment and asked the Commission to revoke the certificates of nine of the twelve telecommunications companies who failed to answer the Petition and remained out of compliance. After careful review of the evidence and the law, we grant the motion of ORS for a default judgment in this docket and revoke the certificates of the nine telecommunications companies listed in the attached Revised Exhibit A, as each of the listed companies failed to answer the Petition after notice.

II. FACTS AND PROCEDURAL HISTORY

On August 10, 2021, ORS filed a Petition asking the Commission to order a rule to show cause why the certificates of public convenience and necessity of certain providers of telecommunications services should not be revoked. The Petition contained three exhibits. Exhibit A is a list of twelve telecommunication companies, indicating the requirements each company failed to follow. Exhibit B is the affidavit of Chad Campbell, ORS Consumer Services Manager, and Exhibit C is the affidavit of Kari Munn, ORS Telecommunications Senior Manager.

The Clerk's Office of the Commission noticed the delinquent telecommunications companies on August 25, 2021, requiring them to file an Answer within thirty days of receipt of the ORS Petition. The notice expressly stated: "[i]f you fail to answer the Petition within the time aforesaid, the Petitioner may apply to the Commission for the relief demanded in the Petition." The Commission filed a Notice of Hearing to begin on November 17, 2021, and established prefiled testimony deadlines for ORS and the respondents. The Clerk's Office served the respondent companies by mailing each a copy of the Petition, the Notice, and the Notice of Hearing and Prefile Testimony Deadlines. On August 25, 2021, the date the Clerk's Office served the notice, twelve companies were not in compliance; however, as of October 6, 2021, nine companies remained out of compliance and three companies came into compliance.

After the thirty-day deadline passed for carriers to answer the Petition, on October 6, 2021, ORS filed a Motion for Default Judgment and Order Revoking Certificates for Failure to Answer. ORS stated: "Respondents to this Motion listed in Revised Exhibit A have failed to file a responsive pleading, or make required payment, or submit required

reports.” (Motion, p. 3). The motion included two exhibits. Revised Exhibit A listed the names of nine telephone utilities who are not in compliance with the law.¹ Exhibit B to the Motion is the Affidavit of Clayton Vaughn, ORS Telecom Specialist, who attested to the listed telephone service providers’ failure to comply with South Carolina law. More specifically, Mr. Vaughn stated in his affidavit:

I attest that to ORS’ knowledge the DOR [Department of Revenue] Outstanding Receivables Report accurately lists those telecommunications carriers which have failed to comply with the provisions of S.C. Code Ann. § 58-3-100, S.C. Code Ann. § 58-3-540, and S.C. Code Ann. § 58-4-60,[(Supp.2019) in that they have failed to pay their Annual Gross Receipts Assessment(s) as of July 1, 2021. In addition, I attest that other carriers have failed to file Annual Reports, Gross Receipts Reports, and USF [Universal Service Fund] Worksheets. Revised Exhibit A attached hereto lists the non-compliant telephone utilities carriers and was prepared by me from the information provided in the DOR Outstanding Receivables Report and other information maintained in the offices of the ORS available to me to determine whether telecommunications carriers have submitted Commission required reports.

Affidavit of Clayton Vaughn, p. 2, Exhibit B to Motion.

Also on October 6, 2021, ORS prefiled the direct testimony of Clayton Vaughn with the Commission explaining three telecommunications carriers “have come into compliance since ORS filed its Petition.” (Direct Testimony of C. Vaughn, p. 4, lines 14-15). The testimony states the nine carriers listed in Testimony Exhibit A remain out of compliance and “ORS recommends that the Commission revoke the Certificates of Public

¹ Revised Exhibit A to the Petition is attached as Order Exhibit No. 1.

Convenience and Necessity for those wire line carriers that are out of compliance.” (*Id.*, p. 4, lines 20-21).

On October 27, 2021, the Commission approved a motion to grant ORS’s motion for a default judgment and to revoke the certificates of public convenience and necessity of the telecommunications companies. The Commission further noted “All telecommunications companies listed on the ORS Exhibit have had effective service, and no response has been received from them. ORS has filed an appropriate affidavit with this Commission.” See Commission Directive, dated October 27, 2021.

III. LAW

“The term ‘telephone utility’ includes persons and corporations, their lessees, assignees, trustees, receivers or other successors in interest owning or operating in this State equipment or facilities for the transmission of intelligence by telephone for hire, including all things incident thereto and related to the operation of telephones.” S.C. Code Ann. 58-9-10(6).

“The commission may make such rules and regulations not inconsistent with law as may be proper in the exercise of its powers or for the performance of the duties set forth in Articles 1 through 13 of this chapter, all of which shall have the force of law.” S.C. Code Ann. 58-9-810.

Each telephone utility shall obey and comply with each and every requirement of every order, decision, direction, rule, or regulation made or prescribed by the commission and every direction, rule, or regulation made or prescribed by the Office of Regulatory Staff in the performance of its duties under Articles 1 through 13 of this chapter, or in relation to any other matter in any way relating to or affecting the business of such telephone utility and shall do everything

necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule, or regulation by all of its officers, agents, and employees.

S.C. Code Ann. 58-9-390.

The South Carolina Code of Laws provides for the assessment of public utilities by the Department of Revenue to aid in funding ORS, the review committee, and the Commission:

The expenses of the Transportation Department of the Office of Regulatory Staff . . . must be borne by the revenues from license fees derived pursuant to [various motor vehicle statutes] **All other expenses of the Office of Regulatory Staff must be borne by the public utilities subject to the jurisdiction of the commission.** On or before the first day of July in each year, the Department of Revenue must assess each public utility, railway company, household goods carrier, and hazardous waste for disposal carrier its proportion of the expenses in proportion to its gross income from operation in this State in the year ending on the thirtieth day of June preceding that on which the assessment is made which is due and payable on or before July fifteenth. The assessments must be charged against the companies by the Department of Revenue and collected by the department in the manner provided by law. . . .

S.C. Code Ann. § 58-4-60 (B).

The expenses associated with the review committee's duties to qualify and nominate candidates for the commission and the Executive Director of the Office of Regulatory Staff, to develop and distribute surveys, to develop an annual workshop on ethics and the Administrative Procedures Act, and to undertake studies shall be borne by the public utilities subject to the jurisdiction of the Public Service Commission. **On or before the first day of July in each year, the Department of Revenue must assess each public utility its proportion of the expenses in proportion to its gross income from operation in this State in the year ending on the thirtieth day of June preceding that on which the**

assessment is made which is due and payable on or before July fifteenth. The assessments must be charged against the companies by the Department of Revenue and collected by the department in the manner provided by law. . . .

S.C. Code Ann. § 58-3-540 (B) (emphasis added).

Except as specifically provided in Sections 58-5-940 and 58-27-50, **all other expenses of the Public Service Commission must be borne by the public utilities subject to the commission’s jurisdiction.** On or before the first day of July in each year, the Department of Revenue must assess each public utility, railway company, household goods carrier, and hazardous waste for disposal carrier its proportion of the expenses in proportion to its gross income from operation in this State in the year ending on the thirtieth day of June preceding that on which the assessment is made which is due and payable on or before July fifteenth. The assessments must be charged against the companies by the Department of Revenue and collected by the department in the manner provided by law. . . .

S.C. Code Ann. § 58-3-100 (emphasis added).

Section 58-9-280 requires a telecommunications company to contribute to a universal service fund (USF): “The commission shall require all telecommunications companies providing telecommunications services within South Carolina to contribute to the USF as determined by the commission.” S.C. Code Ann. § 58-9-280 (E)(2) (Supp. 2020).

The Code allows ORS to require telephone utilities to file an annual report:

Subject to approval of the commission, the Office of Regulatory Staff **may require any telephone utility to file annual reports** in such form and of such content as the Office of Regulatory Staff may require and special reports concerning any matter about which the Office of Regulatory Staff is authorized to inquire or to keep itself informed or which it is required to enforce. All reports shall be under oath when required by the Office of Regulatory Staff.

S.C. Code Ann. § 58-9-370(A) (emphasis added).

Each telephone utility shall obey and comply with each and every requirement of every order, decision, direction, rule, or regulation made or prescribed by the commission and every direction, rule, or regulation made or prescribed by the Office of Regulatory Staff in the performance of its duties under Articles 1 through 13 of this chapter, or in relation to any other matter in any way relating to or affecting the business of such telephone utility and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule, or regulation by all of its officers, agents, and employees.

S.C. Code Ann. § 58-9-390.

The South Carolina Code of State Regulations sets forth the requirements of a telephone utility regarding customer complaints:

A. Complaints concerning the charges, practices, facilities, or service of the telephone utility shall be investigated promptly and thoroughly by the telephone utility. The telephone utility shall keep such records of customer complaints as will enable it to review and analyze its procedures and actions.

B. The telephone utility, except in cases of high toll usage, and when given at least four hours notice shall not terminate service to a complainant until an answer to the complaint is conveyed to the ORS. A written or oral response is allowable for complaints that the telephone utility wishes to dispose of immediately. The use of an oral response does not preclude supplying the ORS with a written response to written complaints.

C. The ORS shall promptly and thoroughly investigate complaints concerning the charges, practices, facilities, or service of the utility. Each utility shall respond to the complaint conveyed to the utility by the ORS in a timely and thorough manner. This time period shall not exceed ten (10) days from the day the complaint is received by the utility, except that the ORS may give the company additional time to respond upon request and for good cause shown.

S.C. Code Ann. Regs. 103-628 (2012).

The Office of Regulatory Staff or any person or corporation having an interest in the subject matter, including any telephone utility concerned, may petition in writing to the commission, setting forth any act or thing done or omitted to be done by any telephone utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer or of any order or rule of the commission.

S.C. Code Ann. § 58-9-1080.

“Upon the filing of a petition pursuant to Section 58-9-1080, the commission shall cause a copy thereof to be served upon the person, corporation, or telephone utility complained of.” S.C. Code Ann. § 58-9-1090. “Service of all pleadings or notices in all hearings and proceedings pending before the commission, except service of the processes provided for by Section 58-9-1040, may be made personally or by mail as the commission may direct.” S.C. Code Ann. § 58-9-1100.

The Code mandates that prehearing motions must be made in writing at least ten days before a hearing and responses are due within ten days after service of the motion. The Commission may hear oral argument on the motion before the hearing, or at the beginning of the hearing. Further, the presiding officer of the Commission may rule on the motion at one of three times: at the end of the argument, at the end of the hearing, or in the order disposing “the subject matter of the proceeding.”

A. Motions, except those made during hearings, will be reduced to writing and filed with the Chief Clerk at least ten (10) days prior to the commencement of a hearing. Responses to such motions are due within ten days after service of said motions. Replies to responses to motions shall be filed with the Commission within five days of service of the response. These times may be modified by order of the Commission or its designee for good cause. Written motions to quash a subpoena will be made pursuant to R. 103-832.

B. The Commission, in its discretion and upon due notice to all parties of record, **may entertain oral argument and response on prefiled motions in advance of the scheduled hearing in the proceeding to which the motions pertain.** Otherwise, such argument and response shall be made at the commencement of the hearing. The presiding officer may make a ruling upon such motion at the completion of oral argument, at the conclusion of the hearing, or in the written order making disposition of the subject matter of the proceeding.

S.C. Code Ann. Regs. 103-829.

The respondent against whom a petition for a rule to show cause is made must answer the petitioner within thirty days.

The person named in a petition for a declaratory order **or in a petition for a rule to show cause** shall serve its answer on the petitioner and **shall file its answer** with certification of service with the Chief Clerk **within 30 days of the receipt of the petition** from the Chief Clerk unless an extension of time is granted for good cause shown.

S.C. Code Ann. Reg. 103-830 (B)(2) (emphasis added).

“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, **the clerk shall enter his default** upon the calendar (file book).” Rule 55(a), SCRCPP (emphasis added).

IV. FINDINGS OF FACT

1. The providers of telecommunications services listed in Revised Exhibit A to the Petition of ORS are under the jurisdiction of the Commission as telephone utilities holding certificates of public convenience and necessity. Revised Exhibit A is attached as Order Exhibit No. 1.

2. ORS filed a Petition with the Commission on August 10, 2021, for a rule to show cause as to why the certificates held by certain telecommunications providers should not be revoked, asserting certain providers failed to submit annual reports, to submit the Universal Service Fund worksheet, to pay certain fees, to obtain customer authorization for changes to service, and/or to respond to customer complaints. ORS filed the affidavits of its Consumer Services Manager and its Telecommunications Senior Manager regarding the facts supporting its petition.

3. On August 25, 2021, the Clerk's Office of the Commission served the ORS Petition, served Notice requiring a response in thirty days, and served a Hearing Notice and Prefiled Testimony Deadlines on the telecommunications providers that were out of compliance.

4. The providers listed in Revised Exhibit A did not respond to the Notice.

5. On October 6, 2021, ORS moved for a default judgment and an order to revoke the certificates of those providers who failed to answer the allegations in the Petition. ORS filed the affidavit of its Telecom Specialist attesting to the accuracy of Revised Exhibit A. ORS also filed the direct testimony of Clayton Vaughn, ORS Program Specialist, Telecommunications Department.

6. The telecommunications providers in Revised Exhibit A had effective service and did not answer the Petition of ORS.

7. ORS filed an appropriate affidavit with the Commission.

8. The failure of the providers to answer the Petition of ORS renders the need for a hearing moot, and thus we find it appropriate to cancel the hearing scheduled in this docket for November 17, 2021, at 2:00 p.m.

V. CONCLUSIONS OF LAW

1. Every telephone utility is required to “obey and comply” with all orders, rules and regulations of the Commission and ORS “in the performance of its duties.” S.C. Code Ann. § 58-9-390 (2015).

2. ORS has the authority to petition the Commission “setting forth any act or thing done or omitted to be done by any telephone utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer or of any order or rule of the commission” pursuant to section 58-9-1080 of the South Carolina Code of Laws.

3. The Commission served the telecommunications providers listed in Revised Exhibit A with Notice of ORS’s Petition and requirement to answer the Petition within thirty days pursuant to sections 58-9-1090 and 58-9-1100.

4. The providers listed in Revised Exhibit A failed to answer the Petition as required by Regulation 103-830(B)(2).

5. We conclude the Commission may enter a default judgment against the providers listed in Revised Exhibit A for failure to answer the Petition of ORS.

IT IS THEREFORE ORDERED:

1. The Certificates of Public Convenience and Necessity held by those telecommunications providers listed in Revised Exhibit A, attached to this Order as Order Exhibit 1, are revoked.

2. The hearing in this docket scheduled for November 17, 2021, at 2:00 p.m. is cancelled.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



A handwritten signature in blue ink, which appears to be "Justin T. Williams", is written over a horizontal line.

Justin T. Williams, Chairman
Public Service Commission of
South Carolina

Order Exhibit 1
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OUT OF COMPLIANCE TELEPHONE UTILITIES

REVISED EXHIBIT A
10/6/2021

(An X indicates the report or payment was not received by the Office of Regulatory Staff or DOR)

Company	Gross Receipts Report	Gross Receipt Payment	Annual Report Filing	USF Worksheet	Slamming	Failure to Respond	Certificate Type	Address	Certificate Docket	Order Granting Authority	Standing w/ Secretary of State	Registered Agent
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J	Column K	Column L	Column M
American Telecommunications Systems, Inc.			X	X			IXC	107 W Michigan Ave, 4 th Floor, Kalamazoo, MI 49007	1997-66-C	1997-652	Good Standing	B. Allston Moore Jr. 5 Exchange St Charleston, SC 29401
City Communications Inc			X				CLEC & IXC	300 Village Center Dr. Ste 1103, Woodstock, GA 30188	2019-100-C	2019-493	Forfeited	InCorp Services Inc. 317 Ruth Vista Rd Lexington, SC 29073
Infinity Networks, Inc	X						PSP	309 East Mark St, Marksville, LA 71351	2013-421-C	2016-425	Good Standing	CT Corporation 2 Office Park Ct. Ste 103 Columbia, SC 29223
Jaroth Inc dba Pacific Tele management Service	X						PSP	2001 Crow Canyon Rd, Ste 201, San Ramon, CA 94583	1985-150-C	2002-570	Forfeited	CT Corporation 2 Office Park Ct. Ste 103 Columbia, SC 29223
Ocean Terminal Corp, Com-Tech Division	X						PSP	PO Box 182, Mt. Pleasant, SC 29464	1985-150-C	1997-61	Forfeited	
Opex Communications Inc dba TCI Long Distance			X	X			IXC	3777 Long Beach Blvd, Ste 400, Long Beach, CA 90807	1998-471-C	1999-142	Forfeited	CT Corporation System 2 Office Park Ct, Ste 103 Columbia, SC 29223
Payphone Partners, Inc	X						PSP	2520 Sardis Rd N, Ste 100, Charlotte, NC 28227	1985-150-C	1999-586	Good Standing	Tony Oxendine 2640 Goldeneye Ridge Sumter, SC 29150
Total Holdings, Inc dba GTC Communications	X		X	X			IXC	3777 Long Beach Blvd, Ste 400, Long Beach, CA 90807	2008-440-C	2009-171	Forfeited	CT Corporation System 2 Office Park Ct, Ste 103 Columbia, SC 29223
Touchtone Communications			X				IXC	16 South Jefferson Rd, Whippany, NJ 07981	2002-364-C	2009-139	Good Standing	Cogency Global Inc. 2 Office Park Ct, Ste 103 Columbia, SC 29223